

REMARKS

In the Office Action,¹ the Examiner took the following actions:

- (1) rejected claims 1-4 and 8-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,163,577 to Ekudden et al. ("Ekudden") in view of U.S. Patent No. 6,782,429 to Kisor ("Kisor");
- (2) rejected claims 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Kisor* and U.S. Publication No. 2004/0233903 to Samaras et al. ("Samaras");
- (3) rejected claims 6 and 13 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Kisor*, U.S. Patent No. 6,920,118 to Lozano ("Lozano"), and U.S. Publication No 2004/0023660 to Ben-Eli ("Ben-Eli"); and
- (4) rejected claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Kisor*, *Lozano*, and U.S. Publication No. 2003/0165148 to Bishard ("Bishard").

By this Amendment, Applicants cancel claims 6 and 13, and incorporate all the elements thereof into their respective independent claims 1 and 8. The rejection of claims 6 and 13 is thus moot. Claims 1-5, 7-12, and 14 remain pending in this application.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Rejection of Claims 1-4 and 8-11 under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 1-4 and 8-11 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view *Kisor*. A *prima facie* case of obviousness has not been established.

“The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. . . . [R]ejections on obviousness cannot be sustained with mere conclusory statements.” M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). “[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966). . . . The factual inquiries . . . [include] [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

A *prima facie* case of obviousness has not been established because the Examiner has not properly ascertained the difference between the prior art and the claimed invention, and thus has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art.

Independent claim 1, as amended, calls for a combination including, for example, “means for determining a quality with which the source data is to be transmitted, on the basis of the detected number of devices and a type of the source data,” as previously recited in canceled claim 6.

The Examiner argues that *Kisor*'s abstract teaches the above-quoted element of claim 1. Office Action, p. 6. This is incorrect.

Kisor discloses that “[t]he system . . . determines at least one desired quality of service characteristic for each of the data t[y]pes.” *Kisor*, abstract. “Examples of [quality of service] QOS characteristics include bandwidth, latency, jitter and reliability.” *Kisor*, col. 1, lines 27-28. However, *Kisor* fails to teach or suggest “determining a quality . . . on the basis of the detected number of devices and a type of the source data,” as recited in claim 1 (emphasis added).

Furthermore, the Examiner attempts to compensate for *Ekudden* and *Kisor*'s deficiencies by arguing that *Ben-Eli*'s abstract and paragraph [0017] teach the above-quoted element of claim 1, which was previously recited in claim 6. *Id.* at 7. This is incorrect.

Ben-Eli discloses “optimiz[ing] throughput on the network by allowing a maximum number of users on the network to be satisfied. . . . [N]etwork resources may be allocated to users . . . until the resources of the network are allocated.” *Ben-Eli*, abstract. Therefore, *Ben-Eli* discloses determining “a maximum number of live calls or communication links” or determining “a number of supported users.” *Id.*, para. [0017]. However, in the system of Ben-Eli, the quality of to-be-transmitted source data is not changed in accordance with the number of user devices, but the number of user devices is limited to maintain the minimum user requirement of each user device. For instance, Ben-Eli, [0016], lines 10-13, recites “In the event user i is not satisfied, resources are allocated to user i at step 320 until a determination is made at step 322

that the requirement of the user i are met." From this, it is apparent that the system of Ben-Eli performs processing for maintaining the quality, but not changing the same.

Thus, *Ben-Eli* does not teach or suggest "determining a quality with which the source data is to be transmitted, on the basis of the detected number of devices," as recited in claim 1. Therefore, *Ben-Eli* fails to cure the deficiencies of *Ekudden* and *Kisor*.

Moreover, none of *Ekudden*, *Kisor*, *Lozano* or *Ben-Eli* teach the "means for detecting a number of devices connected to the wireless communication device via the wireless network; and means for determining the quality with which the source data is to be transmitted, on the basis of the detected number of devices and the type of the source data," recited in amended claim 1.

For at least the foregoing reasons, the prior art, individually or in combination, fails to teach or suggest all the elements of claim 1. Since the Examiner incorrectly characterized the prior art, the Examiner failed to properly ascertain the differences between the claimed invention and the prior art. Therefore, the Examiner has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Thus, a *prima facie* case of obviousness has not been established with respect to claim 1.

Independent claim 8 recites "determine a quality with which the source data is to be transmitted, on the basis of the detected number of devices and a type of the source data." Therefore, claim 8, although different in scope from claim 1, is allowable over the prior art for at least reasons similar to those given for claim 1. Furthermore, dependent claims 2-4 and 9-11 are allowable at least by virtue of their dependence from allowable

base claims 1 and 8. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 1-4 and 8-11 under 35 U.S.C. § 103(a).

Rejection of Claims 5 and 12 under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claim 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Kisor* and *Samaras*. A *prima facie* case of obviousness has not been established.

Claims 5 and 12 depend from claims 1 and 8, respectively, and thus require all the elements thereof. As discussed above, *Ekudden* and *Kisor* fail to teach or suggest all the elements of claims 1 and 8.

The Examiner argues that “*Samaras et al* teach . . . means for detecting the type of the source data by determining from which of the input devices the source data is input.” Office Action, p. 5. Even assuming that the Examiner’s characterization of *Samaras* is correct, which Applicants do not concede, *Samaras* fails to cure the deficiencies of *Ekudden* and *Kisor*. That is, *Samaras* fails to teach or suggest “determining a quality with which the source data is to be transmitted, on the basis of the detected number of devices and a type of the source data,” as recited in claims 1 and 8, and required by claims 5 and 12. Therefore, a *prima facie* case of obviousness has not been established with respect to claims 5 and 12. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 5 and 12 under 35 U.S.C. § 103(a).

Rejection of Claims 7 and 14 under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claim 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Kisor*, *Lozano*, and *Bishard*. A *prima facie* case of obviousness has not been established.

Claims 7 and 14 recite “determining . . . the quality with which the source data is to be transmitted.” The Examiner admits that *Ekudden*, *Kisor*, and *Lozano* fail to teach this element of claims 7 and 14. Office Action, p. 9. However, the Examiner argues that the abstract and paragraphs [0007], [0012], [0016], and [0021] of *Bishard* teach the above-quoted element of claims 7 and 14. This is incorrect.

Bishard “provide[s] [network] congestion management . . . [which] includes at least a first, a second and a third queue.” *Bishard*, abstract. *Bishard* discloses “a strict prioritization” of queues wherein a “scheduler . . . checks the highest priority queue first” such that “the delay . . . for transmission of packets will be low for . . . high priority traffic.” *Id*, para. [0007]. *Bishard* thus “effectively manage[s] data congestion” (para. [0012]) “to provide a needed or desired QoS” (para. [0016]). However, *Bishard* fails to teach or suggest “determining . . . the quality with which the source data is to be transmitted,” as recited in claim 7 (emphasis added). Moreover, *Bishard* merely discloses queuing control. It neither discloses nor suggests that the quality of to-be-transmitted audio data is controlled in accordance with whether there is a device that transmits image data.

Therefore, the prior art, individually or in combination, fails to teach or suggest all the elements of claims 7 and 14. Since the Examiner incorrectly characterized the prior art, the Examiner failed to properly ascertain the differences between the claimed

invention and the prior art. Therefore, the Examiner has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Thus, a *prima facie* case of obviousness has not been established with respect to claims 7 and 14. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 7 and 14 under 35 U.S.C. § 103(a).

Conclusion

In view of the foregoing, Applicants request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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